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**SHANKS & HERBERT**

# Fax

**To:** PCT Legal Office**From:** Shelly Guest Cermak

U.S.P.T.O.

Shanks &amp; Herbert

**Fax:** 703-308-6459**Date:** June 14, 2002**Phone:****Pages:** 6, including cover page**Re:** Appl. Serial NO. 10/009,527**CC:**

Atty. Docket No. 0273-0004


☒ **Urgent**    ☐ **For Review**    ☐ **Please Comment**    ☐ **Please Reply**    ☐ **Please Recycle**

**Comments:**

### Certificate of Facsimile Transmission

I hereby certify that the following correspondence is being facsimile transmitted to The United States Patent and Trademark Office (Fax No. (703) 308 6459) on **June 14, 2002**.

1. Fax Cover Sheet;
2. Request for Withdrawal of the Petition filed under 37 C.F.R. § 1.47(a); and
3. Copy of Combined Declaration/Power of Attorney executed by Hans-Peter FRIEDL.

  
Shelly Guest Cermak, Reg. No. 39,571

### Notice of Confidentiality

The information contained in and transmitted with this facsimile is confidential and intended only for the individual or entity designed above. You are hereby notified that any dissemination, distribution, copying, or use of this facsimile by or to anyone other than the recipient designed above is unauthorized and strictly prohibited. If you have received this facsimile in error, please notify Shanks & Herbert by telephone at 703-683-3600 immediately.

**IN THE UNITED STATES PATENT AND TRADE MARK OFFICE**

In re Application of: SCHAEFER, et al.

Art Unit: To Be Determined

Serial No.: 10/009527

Examiner: To Be Determined

Filed: 12/10/01

Atty. Docket: 0273-0004

For: Biological Joint Construct

**VIA FACSIMILE to 703 308 6459****REQUEST FOR WITHDRAWAL OF THE PETITION FILED UNDER  
37 CFR §1.47(a)**

Box PCT  
Assistant Commissioner for Patents  
Washington, D.C. 20231

Attention: PCT Legal Office

Dear Sir:

This paper is in response to the decision on petition under 37 CFR §1.47(a) in the above-captioned application. This response is timely, although the petition did not have a cover sheet with a mailing date, as the first page was date stamped May 22, 2002. Therefore, assuming the mailing date is May 22, 2002, applicants' response is due within the 2-month statutory deadline set forth in the petition, or July 22, 2002. According to our certificate of facsimile transmission attached hereto, this paper is being faxed to the PCT Legal Office on June 14, 2002, well before the statutory deadline.


Applicants respectfully request that the declaration filed 10 December 2001 entitled "Declaration of Facts by Attorney For Inventor That Cannot Be Located," which was treated by the United States Patent and Trademark Office as a petition under 37 CFR §1.47(a) be withdrawn in light of the concurrently submitted Declaration and Power of Attorney executed by the previously-missing inventor. The petition is now moot since Mr. Friedl has now joined in the application, and all the inventors have now executed the

declaration and power of attorney. The application should now be submitted to the examining group for examination.

It is believed a fee is not required for the filing of this paper; however, if a fee is required, the Commissioner is authorized to charge our deposit account number **50-0622**. If a telephone call would expedite the prosecution of this application, the PTO representative is invited to call the undersigned at 703 683 3600

Respectfully submitted,

SHANKS & HERBERT

By:   
Shelly Guest Cermak  
Reg. No. 39,571

Date: 6-14-02

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The United States Patent and Trademark Office (Fax No. (703) 308 6459) on June 14, 2002.

  
Shelly Guest Cermak, Reg. No. 39,571

**COMBINED DECLARATION AND POWER OF ATTORNEY FOR PATENT APPLICATION**

As a below named inventor, I hereby declare that:  
My residence, post office address and citizenship are as stated below, next to my name.  
I believe I am the original, first, and sole inventor (if only one name is listed below) or an original, first, and joint inventor (if plural names are listed below) of the subject matter which is claimed and for which a patent is sought on the invention entitled Biological Join Construct the specification of which:

\_\_\_\_\_ is attached hereto.  
☒ was filed on December 10, 2001  
as United States Application Number 10/009,527  
or PCT International Application Number \_\_\_\_\_  
and was amended on \_\_\_\_\_  
(if applicable)

I hereby state that I have reviewed and understand the contents of the above-identified specification, including the claim(s), as amended by any amendment referred to above. I do not know and do not believe that the claimed invention was ever known or used in the United States of America before my invention thereof, or patented or described in any printed publication in any country before my invention thereof or more than one year prior to this application, that the same was not in public use or on sale in the United States of America more than one year prior to this application, and that the invention has not been patented or made the subject of an inventor's certificate issued before the date of this application in any country foreign to the United States of America on an application filed by me or my legal representatives or assigns more than twelve months (for a utility patent application) or six months (for a design patent application) prior to this application.

I acknowledge the duty to disclose all information known to me to be material to patentability as defined in Title 37, Code of Federal Regulations, Section 1.56.

I hereby claim foreign priority benefits under Title 35, United States Code, Section 119(a)-(d), of any foreign application(s) for patent or inventor's certificate listed below and have also identified below any foreign application for patent or inventor's certificate having a filing date before that of the application on which priority is claimed:

<u>Prior Foreign Application(s)</u>			<u>Priority Claimed</u>	
<u>199 26 083 4</u> (Number)	<u>Germany</u> (Country)	<u>08-June-1999</u> (Day/Month/Year Filed)	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> No
<u>PCT/EP00/05313</u> (Number)	<u>PCT (WO)</u> (Country)	<u>08-June-2000</u> (Day/Month/Year Filed)	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> No
_____ (Number)	_____ (Country)	_____ (Day/Month/Year Filed)	<input type="checkbox"/> Yes	<input type="checkbox"/> No

I hereby claim the benefit under Title 35, United States Code, Section 119(e) of any United States provisional application(s) listed below

<u>(Application Number)</u>	<u>Filing Date</u>
_____	_____

I hereby claim the benefit under Title 35, United States Code, Section 120 of any United States application(s) listed below and, insofar as the subject matter of each of the claims of this application is not disclosed in the prior United States application in the manner provided by the first paragraph of Title 35, United States Code, Section 112, I acknowledge the duty to disclose all information known to me to be material to patentability as defined in Title 37, Code of Federal Regulations, Section 1.56 which became available between the filing date of the prior application and the national or PCT international filing date of this application:

(Application Number) Filing Date (Status - patented, pending, abandoned)

(Application Number) Filing Date (Status - patented, pending, abandoned)

(Application Number) Filing Date (Status - patented, pending, abandoned)

I hereby appoint Toni-Junell Herbert, Registration No. 34,348, Mark R. Shanks, Registration No. 33,781, Joseph G. Contrera, Registration No. 44,628, Shelly Guest Connak, Registration No. 39,571, Christina M. Gadlano, Registration No. 37,623, Chris Anledot's, Registration No. 48,293, and Kristin Vidovich, Registration No. 41,448, of SHANKS & HERBERT, telephone (703) 683-3600, with a mailing address at

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with full power of substitution and revocation, to prosecute this application and to transact all business in the Patent and Trademark Office connected herewith.

The undersigned hereby authorizes the U.S. Attorneys named herein to accept and follow instructions from undersigned's assignee, if any, and/or, if the undersigned is not a resident of the United States, the undersigned's domestic attorney, patent attorney or patent agent, as to any action to be taken in the Patent and Trademark Office regarding this application without direct communication between the U.S. attorneys and the undersigned. In the event of a change in the person(s) from whom instructions may be taken, the U.S. attorneys named herein will be so notified by the undersigned.

I hereby declare that all statements made herein of my own knowledge are true and that all statements made on information and belief are believed to be true; and further that these statements were made with the knowledge that willful false statements and the like so made are punishable by fine or imprisonment, or both, under Section 1001 of Title 18 of the United States Code and that such willful false statements may jeopardize the validity of the application of any patent issued thereon.

Full Name of Sole/First Inventor: Dirk Johannes SCHAEFER

Inventor's Signature: \_\_\_\_\_ Date: \_\_\_\_\_

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Full Name of Second/Joint Inventor: Christof KLEMT

Inventor's Signature: \_\_\_\_\_

Date: \_\_\_\_\_

Residence: Mullheim  
(City, State)Citizenship: Germany  
(Country)Post Office Address: Kraftgasse 1, D-79379 Mullheim, GERMANYFull Name of Third/Joint Inventor: Gerhard Björn STARK

Inventor's Signature: \_\_\_\_\_

Date: \_\_\_\_\_

Residence: Breitnau  
(City, State)Citizenship: Germany  
(Country)Post Office Address: Am Rossberg 25, D-79874 Breitnau, GERMANYFull Name of Fourth/Joint Inventor: Hans-Peter FRIEDLInventor's Signature: [Signature]Date: 11-Jun-2002Residence: Umkirch  
(City, State)Citizenship: Germany  
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